

2017



RESTRICT

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### WALNUT CREEK Section 2

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the date hereinafter set forth by Lennar Homes of Texas Land and Construction, Ltd., a limited partnership, d/b/a Friendswood Development Company, hereinafter referred to as "Declarant";

#### WITNESSETH

WHEREAS, Declarant is the current owner of certain property in Ft. Bend County, State of Texas, that has been platted and subdivided into a subdivision known as Rosehaven Section Two, according to the plat thereof recorded under Plat #20050172 of the Map Records of Ft. Bend County, Texas.

Declarant, is the Declarant for all of Rosehaven Section Two, which has been developed as a residential and commercial subdivision and Declarant desires to subject it to this Declaration so as to provide and adopt a uniform plan of development, including assessments, conditions, covenants, easements, reservations, and restrictions designed to govern, control, and preserve the values and amenities of this land for the development, improvement, sale, use, and enjoyment of the Property as a residential and commercial subdivision for the benefit of this land and each owner of any part of this land.

All Restricted and Unrestricted Reserves presently subject to this Declaration or subsequently subjected to this Declaration are, however, specifically excepted from Article IX, Restrictions of Use.

It has been deemed desirable, for the efficient preservation of values and amenities in the Property, to create an Association to which shall be delegated and assigned the powers of administering and enforcing the provisions of this Declaration including levying, collecting, and disbursing the assessments.

To exercise these functions, an association was created named WALNUT CREEK COMMUNITY ASSOCIATION, INC., a non-profit corporation created under the laws of the State of Texas. The directors of the Association have established By-Laws by which the Association has and shall be governed.

Declarant declares that the Property shall be developed, improved, sold, used, and enjoyed in accordance with and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations, and restrictions of this Declaration, all of which are adopted for and placed upon the Property; shall run with the Property and be binding on all parties who now or hereafter have or claim any right, title, or interest in the Property or any part of the Property, and on the heirs, executors, administrators, successors, and assigns of such parties, regardless of the source of or the manner in which any such right, title, or interest is or may be acquired; and shall inure to the benefit of each owner of any part of the Property.

#### ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to WALNUT CREEK COMMUNITY ASSOCIATION, INC., a non-profit corporation incorporated under the laws of the State of Texas, and its successors and assigns.

Section 2. "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 3. "Builder" shall mean and refer to a department of Declarant or any other entity to which Declarant conveys Lots or Commercial Units for the purpose of constructing homes or other permitted structures thereon.

Section 4. "Commercial Unit" and "Commercial Units" shall include all land areas and reserves other than Lots Common Open Areas, and any additional land areas and reserves other than Lots, Common Open Areas, and acreage that may thereafter be brought within the jurisdiction of the Association. Each Commercial Unit shall contain 10,000 square feet of commercial land or 20,000 square feet of multi-family land and shall be the equivalent of one Lot or proportional fraction thereof for purposes of membership, voting rights and assessment in and by the Association.

Section 5. "Common Open Area" and "Common Open Areas" shall mean all real property owned by the Association for exclusive common use and enjoyment of the Owners, members of their families and guests.

Section 6. "Conveyance" shall mean and refer to conveyance of a fee simple title to the surface estate of a Lot or Commercial Unit from one Owner to another.

Section 7. "Lot" and "Lots" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Property upon which there has been or may be constructed a single-family residence.

Section 8. "Declarant" shall mean and refer to Lennar Homes of Texas Land and Construction, Ltd., d/b/a Friendswood Development Company, a Texas limited partnership

Section 9. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and any Amendments hereto applicable to the Property recorded in the Office of the County Clerk, Ft. Bend County, Texas, as the same may be amended from time to time therein provided.

Section 10. "Development Period" shall mean and refer to that period of time in which Declarant is the Owner of any Lot or Commercial Unit.

Section 11. "Member" shall mean and refer to those persons entitled to membership as provided in Article IV, Section 1, of this Declaration.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to the surface estate in any Lot or Commercial Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Property" shall mean and refer to all of Rosehaven Section Two, a subdivision in Ft. Bend County, Texas, according to the map or plat thereof recorded under Plat Number 20050172 of the plat records of Ft. Bend County, and any additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 14. "Transfer" shall mean and refer to the transfer of the surface estate of a Lot or Commercial Unit from one legal entity to any department thereof or to another legal entity whether or not the owner of record changes.

**ARTICLE II  
RESERVATIONS, EXCEPTIONS, DEDICATIONS AND CONDEMNATION**

Section 1. Incorporation of Plat. The subdivision plat of Rosehaven Section Two, dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such subdivision plat further establishes certain dedications, limitations, reservations and restrictions applicable to the Property. All dedications, limitations, restrictions and reservations shown on the subdivision plat, to the extent they apply to the Property, are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each contract, deed and conveyance executed or to be executed by or on behalf of Declarant, conveying each Lot or Commercial Unit within the Property.

Section 2. Reservation of Minerals. The Property, and any future land made subject to this Declaration, is hereby subjected to the following reservation and exception: All oil, gas and other minerals in, on and under the herein above described Property are hereby excepted or reserved by predecessor or predecessors in title of Declarant and which exception is made in favor of present owner or owners or owners of such minerals as their interests may appear of record.

Section 3. Condemnation. If all of any part of the Common Open Area is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The expense of participation in such proceedings by the Association shall be borne by the Association and paid for out of assessments collected pursuant to Article V hereof. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings.

All damages or awards for such taking shall be deposited with the Association. If an action in eminent domain is brought to condemn a portion of the Common Open Areas, the Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto; or to convey such portion of the Property to the condemning authority in lieu of such condemnation proceeding.

**ARTICLE III  
PROPERTY RIGHTS**

Section 1. Owner's Easements of Enjoyment. Every Lot and Commercial Unit Owner who resides on the Property shall have a right to an easement of enjoyment in and to the Common Open Areas which shall be appurtenant to and shall pass with the title to every Lot or Commercial Unit, subject to the following provisions:

(a) the right of the Association to grant or dedicate easements in, on, under or above the Common Open Areas or any part thereof to any public or governmental agency or authority or to any utility company for any service to the Property of any part thereof;

(b) the right of the Association to prevent an Owner from planting, placing, fixing, installing or constructing any vegetation, hedge, tree, shrub, fence, wall, structure or improvement or store any personal property on the Common Open Areas or any part thereof without the prior written consent of the Association. The Association shall have the right to remove anything placed on the Common Open Areas in violation of the provisions of this subsection and to assess the cost of such removal against the Owner responsible. Such cost shall be an additional assessment as hereinafter provided for;

(c) the right of Declarant (and its sales agents and representatives) to the non-exclusive use of the Common Open Areas and the facilities thereof, for display and exhibit purposes in connection with the sale of Lots or Commercial Units within the Property, which right Declarant hereby reserves; provided, however, that such use shall not continue for a period of more than fifteen (15) years after conveyance of the Common Open Areas within the Property to the Association, provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise unreasonably restrict the Members in their use and enjoyment of the Common Open Areas;

(d) the right of the Association to limit the number of guests of Owners utilizing the recreational facilities and improvements owned by the Association and provided upon Common Open Areas;

(e) the right of the Association to establish uniform rules and regulations and to charge reasonable admission and other fees pertaining to the use of any recreational facilities owned by the Association; and

(f) the right of the Association to suspend the voting rights of an Owner and the Owner's right to use any recreational facility of the Association during the period the Owner is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against a Lot or Commercial Unit and to suspend such rights for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. The aforesaid rights of the Association shall not be exclusive but shall be cumulative of and in addition to all other rights and remedies which the Association may have by virtue of this Declaration or its By-Laws or at law or in equity on account of any such default or infraction.

Section 2. Delegation of Use. Owners subject to an easement of enjoyment in and to the Common Open Areas may delegate their right to or enjoyment of the Common Open Areas to members of their families, tenants or contract purchasers who reside in Owner's residential dwelling or commercial structure.

Section 3. Waiver of Use. No Owner may be exempt from personal liability for assessments duly levied by the Association, nor release a Lot or Commercial Unit owned from the liens and charges hereof, by waiver of the use and enjoyment of the Common Open Areas thereon or by abandonment of Owner's Lot or Commercial Unit.

#### **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Each person or entity who is a record Owner of any of the Property, which is subject to assessment by the Association, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land, which is subject to assessment, by the Association.

Section 2. Voting Classes. The Association shall initially have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except as hereinafter provided) and shall be entitled to one vote for each Lot, equivalent Lot, or Commercial Unit owned. When more than one person holds an interest in any Lot or Commercial Unit, all such persons shall be members. The vote of such Lot or Commercial Unit shall be exercised as the persons among themselves determine, but in no event shall more than one vote be cast with respect to each Lot or Commercial Unit owned.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot or Commercial Unit owned. Class B membership shall cease and be converted to Class A membership on the earlier of the following dates:

- (a) the date on which the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or
- (b) January 1, 2024.

## **ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot or Commercial Unit owned within the Property, hereby covenants, and Owner of any Lot or Commercial Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges; and
- (b) additional assessments as herein provided; and
- (c) special assessments, which are to be established and collected as hereinafter, provided.

The annual, additional, and special assessments, together with interest, late fees, penalties, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing and contractual lien upon the Lot or Commercial Unit against which each such assessment is made. Each such assessment, together with interest, late fees, penalty, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot or Commercial Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. Purposes of Assessment. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Members of the Association and for the improvement and maintenance of the Common Open Areas including the improvements and landscaping thereon.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Commercial Unit to an Owner, the maximum annual assessment shall be \$450.00 per Lot or Commercial Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot or Commercial Unit to an Owner, the maximum annual assessment may be increased each year above the maximum assessment for the previous year without a vote of the membership by the percentage change by which the Consumer Price Index for the immediately preceding calendar year exceeds such Index for the calendar year prior thereto or by fifteen percent (15%), whichever is greater. As used herein, the "Consumer Price Index" shall mean the year-end Consumer Price Index for All-Urban consumers, published by the U.S. Department of Labor (or a generally accepted replacement should such Index no longer be published).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Commercial Unit to an Owner the maximum annual assessment may be increased above the rates

specified in this Section 3, Paragraph (a) by a vote of two-thirds (2/3) of each class of Members entitled to vote in person or by proxy, at a meeting duly called for this purpose at which a quorum is present.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost for necessary purposes of the Association, such as the construction, reconstruction, repair or replacement of a capital improvement in the Common Open Areas, including fixtures and personal property related thereto, or for counsel fees or the fees of other retained experts provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members entitled to vote in person or by proxy, at a meeting duly called for this purpose at which a quorum is present.

Section 5. Rate of Assessment. All Lots and Commercial Units within the Property shall commence to bear their applicable assessments simultaneously, and improved Lots and Commercial Units owned by the Declarant are not exempt from assessment. Lots or Commercial Units which are owned by or transferred to a Builder or which are occupied by residents and improved Lots or Commercial Units owned by Declarant shall each be subject to an annual assessment as determined by the Board of Directors pursuant to the terms of this Declaration. Unimproved Lots or Commercial Units which are owned by Declarant shall be assessed at the rate of one-fourth (1/4) of the annual assessment; however, said assessment shall be made only in the event and then only to the extent that assessments from Lots or Commercial Units owned by other than Declarant are not sufficient to meet the operating budget of the Association. As used herein, the term "improved Lot" or "improved Commercial Unit" shall mean a Lot or Commercial Unit on which a residential dwelling or commercial structure has been constructed and is ready for occupancy as evidenced by the issuance of a Certificate of Occupancy by the City of Houston, Texas (to the extent that such Certificate of Occupancy is required by prevailing law). A Lot or Commercial Unit assessment shall be assessed against a builder, instead of Declarant when a Lot or Commercial Unit is made available for improvement by said Builder and there is written confirmation, reservation, or conveyance of said Lot or Commercial Unit by Declarant in favor of Builder. As used in this Section 5, the term "Declarant" shall be construed to mean only Lennar Homes of Texas Land and Construction, Ltd., d/b/a Friendswood Development Company, and its successors and assigns, acting in their capacity as land developers; and a Lot or Commercial Unit owned, reserved, or held by a home building division or any commercial construction division of Declarant shall be subject to full assessment as provided herein.

Section 6. Creation of Parcel Assessment. There are hereby created Parcel Assessments for Common Expenses as may from time to time be authorized by the Board of Directors. Parcel Assessments shall be levied against Lots within particular parcels of the Properties for whose benefit expenses are incurred, such as maintaining and operating facilities and amenities within a Parcel reserved for use of the residents within that Parcel, expenses of enforcing all assessments, covenants, and conditions relating to a respective Parcel, and expenses determined by the Board to be for the benefit of a respective Parcel. Each Lot within a Parcel shall pay a Parcel Assessment computed in the same manner as such Lot pays a General Assessment. Parcel Assessments established in one Parcel do not need to be equal to Parcel Assessments established in another Parcel. Parcel Assessments shall be collectable and enforceable in the same manner as all other assessments hereunder.

Section 7. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots or Commercial Units on the first day of the month following the conveyance of a Lot or Commercial Unit to an Owner or a transfer of any Lot or Commercial Unit owned by Declarant to a Builder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot or Commercial Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to each Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or authorized agent of the

Association setting forth whether or not the assessments on a specified Lot or Commercial Unit have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. The annual maintenance charge assessed against each Lot shall be due and payable, in advance, on the date of the sale of such Lot by Declarant for that portion of the calendar year remaining, and on the first (1st) day of each January thereafter. Any annual maintenance charge which is not paid and received by the Association by the thirty-first (31st) day of each January thereafter shall be deemed to be delinquent, and, without notice, shall bear interest at the rate of ten percent (10%) per annum from the date originally due until paid. Further, the Board of Directors of the Association shall have the authority to impose a monthly late charge on any delinquent annual maintenance charge. The monthly late charge, if imposed, shall be in addition to interest. To secure the payment of the annual maintenance charge, additional assessments, special assessments levied hereunder and any other sums due hereunder (including, without limitation, interest, late fees, attorney's fees or delinquency charges), there is hereby created and fixed a separate and valid and subsisting lien upon and against each Lot and all Improvements thereto for the benefit of the Association, and superior title to each Lot is hereby reserved in and to the Association. The lien described in this Section and the superior title herein reserved shall be deemed subordinate to any mortgage for the purchase or improvement of any Lot and any renewal, extension, rearrangements or refinancing thereof. The collection of such annual maintenance charge and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interests, costs and attorney's fees shall be chargeable to and be a personal obligation of the defaulting Owner. Further, the voting rights of any owner in default in the payment of the annual maintenance charge, or other charge owing hereunder for which an Owner is liable, and/or any services provided by the Association, may be suspended by action of the Board for the period during which such default exists. Notice of the lien referred to in the preceding paragraph may, but shall not be required to, be given by the recordation in the office of the County Clerk of Ft. Bend County, Texas of an affidavit, duly executed, and acknowledged by an officer or authorized agent of the Association, setting forth the amount owned, the name of the Owner or Owners of the affected Lot, according to the books and records of the Association, and the legal description of such Lot. Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Association the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid annual maintenance charge and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including both judicial and non-judicial foreclosure pursuant to Chapters 51 and 209 of the Texas Property Code (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to his Lot, each Owner expressly grants, bargains, sells and conveys to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid annual maintenance charge, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time and grants to such trustee a power of sale. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and filed in the office of the County Clerk of Ft. Bend County, Texas. In the event of the election by the Board to foreclose the lien herein provided for nonpayment of sums secured by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, to enforce the lien and to sell such Lot, and all rights appurtenant thereto, in accordance with the provisions of Chapters 51 and 209 of the Texas Property Code as same may hereafter be amended. At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Commercial Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Commercial Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Commercial Unit from liability of any assessments which thereafter become due or from the lien thereof.

Section 10. Exempt Properties. Any portion of the Property dedicated to and accepted by a local public authority, shall be exempt from the assessments created herein. Local public authorities include Ft. Bend County, the City of Rosenberg, Ft. Bend County Municipal Utility Districts No. 152, Lamar Independent School District, and like public authorities. Non-profit organizations such as churches and private schools are not exempt from said assessments. Further, no land or improvements devoted to residential dwelling or commercial use shall be exempt from said assessments.

## **ARTICLE VI ARCHITECTURAL CONTROL**

Section 1. Architectural Approval. The overall plan for the development of the various areas and sections which make up Oakhurst contemplates centralization of architectural control to enhance, insure and protect the attractiveness, beauty and desirability of the area as a whole while at the same time permitting compatible distinctiveness of individual developments within the area. For this purpose, Declarant hereby reserves and retains the right of architectural control to itself or its assignee as hereinafter provided. Declarant shall initially appoint an Architectural Review Committee, consisting of not less than three (3) members, who need not be members of the Association, and who by majority vote may designate a representative to act for them. Any vacancy shall be filled by a successor appointed by Declarant; until such successor(s) shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications, and plot plans submitted to or designate a representative with like authority. Declarant retains the exclusive right to review and approve or disapprove all plans and specifications for original construction of the Property.

It is accordingly covenanted and agreed that no building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alternation to such structure or the color thereof (including, without limitation, site landscaping visible from any part of the Property and grading plans, patio covers and trellises, plans for off-street parking of vehicles and utility layout), be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee. In the event said Committee, or its designated representative, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been received by it, approval will not be required, and this Article will be deemed to have been fully complied with. All plans and specifications shall be submitted in writing over the signature of the Owner of the Lot or Commercial Unit or the Owner's authorized agent. The Architectural Review Committee shall have the right to require any Owner to remove or alter any structure which has not received approval or is built other than in accordance with the approved plans. The requirement of this Article is in addition to any approvals or permits required by any appropriate governmental entity.

Declarant hereby reserves and retains the right at its option to assign in whole or in part, its rights hereinabove set forth to an Architectural Review Committee appointed by the Association. In the event Declarant elects to assign such rights of approval, such assignment shall be evidenced by an instrument in writing and acknowledged by the proper officers of Declarant and placed of record in the appropriate records of the County Clerk of Ft. Bend County, Texas.



Section 2. No Liability. Neither Declarant, the Association, its Board of Directors, nor the Architectural Review Committee or the members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of a Lot or Commercial Unit affected by these restrictions by reason of mistake in judgment, negligence, or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Review Committee for approval agrees, that no action or suit for damage will be brought against Declarant, the Association, its Board of Directors, the Architectural Review Committee, or any of the members thereof.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for the material used, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners, nor for ensuring that the improvements are fit for their intended purpose.

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the ARC, and the members of each shall be defended and indemnified by the Association as provided in the By-Laws.

Section 3. Notice of Noncompliance. Notwithstanding anything to the contrary contained herein, after the expiration of one (1) year from the date of issuance of a building permit by municipal or other governmental authority for any improvement, and completion of construction of the improvement in accordance with the building permit, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article VI unless actual notice of such noncompliance or noncompletion, executed by the Architectural Review Committee, or its designated representative, shall appear of record in the office of the County Clerk and Recorder of Ft. Bend County, Texas, or unless legal proceedings shall have been instituted to enforce compliance or completion.

Section 4. Rules and Regulations. The Architectural Review Committee may from time to time recommend to the Board, and the Board may, in its sole discretion, adopt, promulgate, amend and repeal rules and regulations interpreting and implementing the provisions of this Article VI, including adoption of detailed architectural guidelines and the imposition of a fee or charge for review of proposed improvements or modifications.

Section 5. Variances. The Architectural Review Committee may recommend to the Board, and the Board may, by the vote or written consent of a majority of the members thereof, allow reasonable variances as to the covenants, conditions or restrictions contained in Article IX, Sections 16, 17, 18, 22, 23, and 25 of this Declaration, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Property. Variances contained in plans that are inadvertently approved by the Architectural Control Committee as part of the proposed improvements shall not be considered as having been approved unless specifically approved by the Board in accordance with the provisions of this Section.

**ARTICLE VII  
DUTIES AND MANAGEMENT OF THE ASSOCIATION**

Section 1. Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Own, maintain and otherwise manage all Common Open Areas and all facilities, improvements and landscaping thereon, and all other property acquired by the Association.
- (b) Pay any real and personal property taxes and other charges assessed against the Common Open Areas.
- (c) Have the authority to obtain, for the benefit of all of the Common Open Areas, all water, gas and electric services and refuse collection.
- (d) Grant easements where necessary for utilities and sewer facilities over the Common Open Areas to serve the Common Open Areas and the Property in general.
- (e) Maintain such policy or policies of insurance as the Board of Directors of the Association may deem necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.
- (f) Have the authority to contract with a management company for the performance of maintenance and repair and for conducting other activities on behalf of the Association provided that such contract shall be limited to a duration of two (2) years, except with the approval of a majority of the Members entitled to vote. Any such management agreement shall provide that it will be terminable by the Association with or without cause upon thirty (30) days' written notice.
- (g) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association.
- (h) Have a duty to landscape and maintain the landscaping upon the Common Open Areas and the duty to maintain the perimeter walls or fences located at entrances to the Property, Common Open Areas, greenbelt buffers, parks and fencing and walls located on portions of Lots or Commercial Units.

**ARTICLE VIII  
UTILITY BILLS, TAXES AND INSURANCE**

Section 1. Obligations of Owners.

- (a) Each Owner shall have separate electric, gas and water meters and shall directly pay for all electricity, gas, water, sanitary sewer service, telephone service, security systems, cable television and other utilities used or consumed by Owner.
- (b) Each Owner may directly render for taxation Owner's Lot or Commercial Unit and improvements thereon, and shall at Owner's own cost and expense directly pay all taxes levied or assessed against or upon Owner's Lot or Commercial Unit.

Section 2. Obligation of the Association.

(a) The Association shall pay, as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Open Areas or any part thereof.

(b) The Association may render for taxation and, as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or upon the Common Open Areas and the improvements and the property appertaining thereto.

(c) The Association shall have authority to obtain and continue in effect, as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities in the Common Open Areas and the contents thereof and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such amounts as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive general liability insurance in such amounts as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is reasonably available) from and against liability in connection with the Common Open Areas.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid as a common expense of all Owners and shall be paid out of the assessments.

**ARTICLE IX  
RESTRICTIONS OF USE**

Section 1. Single Family Residential Construction. Subject to Sections 2 and 11 of this Article, each Lot shall be used only for single-family residence purposes. No building shall be erected, altered or permitted to remain on any Lot other than one single-family detached residential dwelling not to exceed two (2) stories in height, and a private garage for not more than three (3) cars, which structure shall not exceed the main dwelling in height or number of stories. No such residence shall be constructed on less than the equivalent of one full Lot as defined in this Declaration or that may appear on any recorded plat or replat approved by Declarant or its assignee.

Section 2. Prohibition of Offensive or Commercial Use. No activity which may be or become an annoyance or nuisance to the neighborhood or which shall in any way unreasonably interfere with the quiet enjoyment of each Owner of such Owner's Lot or which shall degrade property values or distract from the aesthetic beauty of the Property shall be conducted thereon. No repair work, dismantling, or assembling of boats, motor vehicles or other machinery shall be done in any driveway or adjoining street. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes. Notwithstanding the above, Declarant, its successors or assigns, or Builders may use the Property for model homes display and sales offices during the Development Period, during construction or until all new homes on the Property have been sold.

Section 3. Minimum Square Footage. The living area of the main residential structure for Lots, exclusive of porches and garage, shall not be less than 1,200 square feet. Declarant shall have the right to modify these minimum square footage requirements for any additional land annexed into the Association and made subject to this Declaration.

Section 4. Building Materials. The predominant exterior materials of the main residential structure, garage, ancillary buildings or other structures, whether attached or detached, shall be masonry, stucco, stone, wood, or fiber-cement ("Hardiplank"). No single-family construction, private garage or any

other structure located on the Property shall be permitted to have a heating or cooling device located in a window or any other opening which can be viewed from any portion of the Property. Heating and cooling devices may be used in windows or other openings of any structure used by Declarant or a Builder during the completion and sale of all construction of this subdivision.

Section 5. Location of Improvements Upon the Lots. No building shall be located on any Lot nearer to the front line nor nearer to the side street line than the minimum building setback lines shown on the recorded plats. No building or other improvements on a Lot shall be located nearer than five feet (5') to an interior lot line. Declarant shall have the right to modify these setback criteria for any additional land annexed into the Association and made subject to this Declaration, and Declarant shall establish building setback criteria for uses other than single-family residential on a case-by-case basis.

Section 6. Deviations. Declarant at its sole discretion, is hereby permitted to approve deviations in these restrictions on building area, location of improvements on the Lots and building materials in instances where in its judgment, such deviation will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions for that lot only.

Section 7. Composite Building Sites. Any Owner of one or more adjoining Lots (or portions thereof) may consolidate such Lots or portions into one (1) building site, with the privilege of placing or constructing improvements on such resulting site, in which event setback lines shall be measured from the resulting side property lines rather than from the lot lines as indicated on the recorded plat. Any such composite building site must have a frontage at the building setback line of not less than the minimum frontage of lots in the same block on the recorded plat of Rosehaven Section Two. Any revision of lot sizes is subject to all applicable regulations and laws for the State of Texas, the County of Ft. Bend, and the City of Rosenberg.

Section 8. Utility Easement. Easements for installation and maintenance of utilities are reserved as shown on the recorded plat, and no structure shall be erected on any of such easements. Neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or contractors to shrubbery, trees, flowers or improvements located on the land covered by such easements.

Section 9. Electrical Distribution Service. An electric distribution system will be installed in the Property, in a service area that will embrace all of the lots which are platted in the Property. In the event that there are constructed within the Property structures containing multiple dwelling units such as townhouses, duplexes, or apartments, then the underground service area shall embrace all of the dwelling units involved. The Owner of each lot containing a single dwelling unit, or in the case of multiple dwelling unit structure, the Owner or developer, shall, at its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, the point of attachment to be made available by the electric company at a point designated by such company at the property line of each lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter.

Declarant has either by designation on the plat or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each lot containing a single dwelling unit, or in the case of a multiple dwelling unit structure the Owner and developer thereof, shall at its own cost, furnish, install own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the

location and installation of the meter of such electric company for each dwelling unit involved. For so long as this service is maintained in the Property, the electric service to each dwelling unit shall be underground, uniform in character, and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

Easements for the underground service may be crossed by driveways and walkways provided the Lot Owner makes prior arrangements with the utility company furnishing any utility service occupying the easement and provides and installs the necessary conduit of approved type and size under such driveway or walkways prior to construction thereof.

Such easement for the underground service shall be kept clear of all other improvements, including buildings, patios or other paving, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers or other improvements (other than crossing driveways or walkways providing conduit has been installed as outlined above) of the Lot Owner located on the land covered by such easements.

Section 10. Audio and Video Communication Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies and Declarant shall have the right and power in such agreement or agreements to grant to such cable television company or companies the uninterrupted right to install and maintain communications cable and related ancillary equipment and appurtenances within the utility easements and rights-of ways dedicated by the Subdivision Plat or by separate instruments pertaining to the Subdivision. In the event that audio and video communication services and facilities are made available to any Lot by means of an underground cable system, there is hereby reserved to the company furnishing such services and facilities a two foot (2') wide easement along and centered on the underground wire or cable when and as installed by the company furnishing the service from the utility easement nearest to the point of connection on the permanent improvement of structure constructed, or to be constructed, upon the Lot and in a direct line from the nearest utility easement to the point of connection.

Section 11. Temporary Structures. No structures of temporary character, nor any recreational vehicle, mobile home, trailer, basement, tent, shack, garage, barn, playhouse or other outbuilding shall be constructed, erected, altered, placed or permitted to remain on any Lot at any time as a residence. Notwithstanding the foregoing, Declarant reserves the exclusive right to erect, place and maintain, and permit builders to erect, place and maintain, such facilities in and upon the Property as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and sale of homes and construction of other improvements on the Property.

Section 12. Outbuildings. Outbuildings, whether temporary or permanent, used for accessory, storage or other purposes shall be limited to eight feet in height and one hundred (100) square feet in area and must be approved in accordance with Article VI, Section 1 of this Declaration. The standard, type, quality and color of materials used in the construction of gazebos, storage structures, shade and other structures shall be harmonious with those of the main residence. Metal siding or roofing shall not be permitted. Outbuildings may not be placed nearer than ten (10) feet to the rear property line, and shall meet the side lot setback criteria set forth in Article IX, Section 5 of this Declaration, as modified for future land annexed into the Association and made subject to this Declaration.

Section 13. Play Structures. Freestanding play structures such as playhouses, play forts and swing sets shall be permitted in back yards, subject to the area and setback limitations of Section 13 and a maximum height of eight feet (8'). All play structures are subject to approval by the ARC. Tents or awnings on play structures are subject to the same height restrictions. Multi-color awnings shall not be permitted. Notwithstanding the height limitations, permanently installed basketball goals may be regulation height.

Portable basketball goals may be placed in, or adjacent to, Owner's driveways for a period not to exceed twenty-four (24) consecutive hours. Portable basketball goals must be stored out of view from any street in the subdivision when not in use. Portable basketball goals may not be utilized within any common area or public right of way (including greenbelts, sidewalks, streets or cul-de-sacs).

Section 14. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats or other common household pets (not to exceed two of each category) provided they are not kept, bred or maintained for commercial purposes. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious to residents in the vicinity. Animals are not permitted to roam the Property and must be controlled on a leash if they are not on a Lot. The Board of Directors shall have the right to limit the number of, and/or prohibit entirely, breeds of dogs that exhibit aggressive tendencies.

Section 15. Walls, Fences and Hedges.

(a) All walls, fences, planters and hedges shall be controlled strictly for compliance with this Declaration and architectural standards established by the Declarant or the Architectural Review Committee.

(b) No wall, fence, planter or hedge in excess of two feet (2') in height shall be erected or maintained on a side lot line forward of point located three feet (3') back from the front exterior corners of the main residential structure located on a Lot. For the purpose of this provision the front wall of the main residential structure excludes bay or box windows, chimney structures or any other similar appendage.

(c) No wall, fence, or hedge in excess of six feet (6') in height shall be erected and maintained on a side lot line from a point located three feet (back from the front exterior corner of the main residential structure, backward to the rear property line on a Lot.

(d) On corner lots, side yard fences must be set back from the side property line one-half (½) of the side building line setback shown on the plat.

(e) Perimeter fencing on all Lots shall be maintained to a fence standard equivalent to original construction and all fencing must be consistent with this Declaration and architectural standards established by Declarant or the ARC.

(f) Ornamental steel fencing must be used along all rear yards and partially on side property lines (last 14 feet from rear property line). The ornamental steel fence shall be six feet (6') in height and shall transition to the six-foot (6') high wooden fence.

(g) Fences of wire or chain link construction are prohibited, and the design and materials of all fences shall be approved by the Architectural Review Committee prior to construction pursuant to the approval requirements of Article VI, Section 1, of this Declaration.

Section 16. Antennas. Satellite dish antennas which are forty inches (40") or smaller in diameter and antennas designed to receive television broadcast signals may be installed, provided that they are installed in conformance with the Architectural Guidelines adopted by the Board. Satellite dish antennas which are greater than forty inches in diameter and other antennas are prohibited.

Section 17. Visual Screening. All clothesline, equipment, garbage cans, service yards, woodpiles, refuse containers, or storage piles and household projects such as equipment repair and construction projects shall be screened by adequate planting or fencing so as to conceal them from view of neighboring lots, streets, parks and public areas. All rubbish, trash, and garbage shall be kept in sanitary refuse containers with tightly fitting lids and shall be regularly removed from the lots and not allowed to accumulate thereon.

All stack vents and attic ventilators shall be located on the rear roof slopes perpendicular to the ground plane. They shall be placed in a location least visible from public areas and adjoining property.

Section 18. Visual Obstructions at the Intersections of Public Streets. No object or thing which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways within the triangular area formed by the junction of street curb lines and a line connecting them at points twenty-five feet (25') from the junction of the street curb lines (or extensions thereof) shall be placed, planted or permitted to remain on any corner lots.

Section 19. Lot and Parcel Maintenance. All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owner or occupant of all Lots shall eradicate all weeds and keep all grass thereon cut, neatly maintained, and regularly fertilized. Owner, at all times, shall be responsible for prompt removal and replacement of dead or dying trees, bushes and bedding plants. In no event shall owner use, or allow any Lot be used, for storage of material and equipment except for normal residential purposes or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish.

Section 22. Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment. Except as otherwise specifically provided in this Declaration, no Owner, lessee, tenant or occupant of a Lot, including all persons who reside with such Owner, lessee or occupant on the Lot, shall park, keep or store any vehicle on any Lot which is visible from any street in the Subdivision or any neighboring Lot other than a passenger vehicle or light truck and then only if parked on the driveway for a period not exceeding forty-eight (48) consecutive hours. For purposes of these Restrictions, the term "passenger vehicle" is limited to any vehicle which displays a passenger vehicle license plate issued by the State of Texas or which, if displaying a license plate issued by another state, would be eligible to obtain a passenger vehicle license plate from the State of Texas, and the term "light truck" is limited to a one (1) ton capacity pickup truck, sports utility vehicle, or van which has not been adapted or modified for commercial use. Such commercial modifications may include, but is not limited to, business signage on the vehicle. No passenger vehicle or light truck owned or used by the residents of a Lot shall be permitted to be parked overnight on any street in the Subdivision. No guest of an Owner, lessee or other occupant of a Lot shall be entitled to park on any street in the Subdivision overnight or on the driveway of a Lot for a period longer than forty-eight (48) consecutive hours. Motorcycles, bicycles, ATV's or other such vehicles, together with lawn mowers, lawn tractors and similar equipment, must stored out of view from any street in the subdivision when not in use

Section 21. Signs, Advertisements and Billboards. No sign, advertisement, billboard or advertising structure of any kind shall be displayed to the public view on any portion of a Lot or Common Open Areas except for one sign for each Lot of not more than twenty-eight (28) inches by thirty-eight (38) inches solely advertising the Lot for sale or rent, and except signs used by Declarant or a Builder to advertise the Lot during the construction and sales period. The Declarant and the Association shall have the right to remove any signs, advertisements or billboard or structure which is placed on said Lot or Common Open Areas, in violation of this section and in so doing shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal. The Architectural Guidelines approved by the Board may permit school spirit or security signs subject to the conditions relating to size and period of display as contained in the guidelines and subject to obtaining the Architectural Committee's prior written approval.

Section 22. Removal of Soil and Trees. The digging of soil or the removal of soil from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on said Lot. No trees shall be cut except to provide room for construction of improvements or to remove dead or unsightly trees and then only following the obtaining of written approval for such cutting by Declarant or the Association, given in their sole discretion.

Section 23. Roofing Material. Roofing materials may include composition shingles having a minimum warranty period of 25 years. Composition shingle roofs shall be comparable in color to weathered wood shingles and comparable in surface textural appearance to wood shingles. Colors for slate, clay or concrete tile roofs shall be approved individually by the Declarant or its assignee. Any other type or classification roofing material shall be permitted only at the sole discretion of the Declarant or its assigns upon written request.

Section 24. Landscaping.

(a) The landscaping plan for each Lot shall be submitted to the Architectural Review committee for approval pursuant to the provisions of Article VI.

(b) All front and side yards of each Lot shall, unless otherwise approved by the Architectural Review Committee, be sodded with grass.

(c) All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the Architectural Review Committee no later than thirty (30) days following the issuance of a certificate of occupancy for the residential dwelling situated thereon.

(d) No hedge or shrubbery planting which obstructs sight lines of streets and roadways shall be placed or permitted to remain on any Lot where such hedge or shrubbery interferes with traffic sight lines for roadways within the subdivision. The determination of whether any such obstruction exists shall be made by the Architectural Review Committee, whose determination shall be final, conclusive and binding on all Owners.

(e) No rocks, rock walls or other substances shall be placed on any Lot as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of such Lot or to otherwise impede or limit access to the same. No bird baths, foundations, reflectors, flag poles, statues, lawn sculptures, artificial plants, rock gardens, rock walls, free-standing bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot.

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or in the rear (back) yard of any Lot if visible from any street.

(g) The Architectural Review Committee may from time to time promulgate rules and regulations adopting an approved list of plant life which may be utilized on any Lot, which rules and regulations may prescribe that a minimum dollar amount be established and utilized as the landscaping budget for each Lot.

(h) No Owner shall allow the grass on this Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground.

(i) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be removed from each Lot or residential dwelling within a reasonable period of time after such holiday passes. The Architectural Review Committee shall have the sole discretion to determine what is a reasonable period of time for seasonal or holiday decorations to exist after the holiday passes and its determination shall be final.



(j) Each Owner shall be responsible for maintaining and replacing, if needed, the front yard and street trees as follows:

1. Yard Trees. The specific number of front yard trees required for each lot depends on lot width. The following standards should be adhered to for the appropriate lot widths specified:

Standard Lots:

- a. 50' and 55' lots require 2 yard trees
- b. 60' lots require 3 yard trees

Corner Lots:

- c. 50' and 55' lots require 3 yard trees (1 in front plus 2 on the side)
- d. 60' lots require 4 yard trees (2 in front and 2 on the side)

Yard trees must be a minimum of three inches (3') in caliper for hardwoods and twelve inches (12") above grade. Additionally, trees must have a minimum height of ten feet (10') and a minimum spread of five feet (5'). However larger trees are encouraged.

2. Street Trees. Two (2) Street Trees must be planted five feet (5') behind the curb and be thirty gallon (30) container-grown Live Oaks and at least two inches (2") in caliper when measured twelve inches (12") above grade. Trees shall have a minimum height of eight feet (8') and a minimum spread of five feet (5') planted and staked with two (2) metal posts a maximum of twenty-five feet (25') on center.

3. Other Vegetation. In addition to the tree requirements above, individual lots must meet the following minimum requirements.

- (a) At least fifteen (15) foundation shrubs per lot should be installed in the front yard with a minimum container size of five (5) gallons.
- (b) At least two (2) vertical foundation accent shrubs per lot should be installed in the front yard with a minimum container size of ten (10) gallons.
- (c) Primary shrub treatment in the front yard shall be within the back third of the front of the home. This is not to preclude additional landscaping in other areas of the front yard.
- (d) At least two (2) shrubs, five (5) gallon size are required in front of air conditioners visible from the street. Air conditioners on corner lots must be enclosed by the fence on the street side of the lot.

The Owner of each Lot shall plant and maintain grass between the boundary of their Lot and the paved right of way adjacent to their Lot.

Section 25. Mail Delivery Receptacles. The ARC reserves the right to approve the type, design and installation of any mail delivery boxes or mail deposit receptacles.

Section 26. Enforcement. In the event of default on the part of the Owner or occupant of any Lot in observing any or all of the requirements herein set forth, and such default continuing after ten (10) days' written notice thereof, the Declarant or the Association may, without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot, cut, or cause to be cut, such weeds and grass, and remove or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or the occupation of the Lot to pay such statement immediately upon receipt thereof. Such charge shall become an additional assessment in accordance with Article V, Section 1(b) of these restrictions.

## ARTICLE X SECURITY

The Association, its directors, officers, manager, employees, agents and attorneys and Declarant, ("Association and Related Parties") shall not in any way be considered an insurer or guarantor of security within the Property. The Association and Related Parties shall not be liable for any loss or damage by reason of failure to provide adequate security or the ineffectiveness of security measures undertaken. Owners, lessee and occupants of all Lots, on behalf of themselves, and their guests and invitees, acknowledge that the Association and Related Parties do not represent or warrant that any fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices, or other security systems (if any are present) will prevent loss by fire, smoke, burglary, theft, hold-up or otherwise, nor that fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices or other security systems will in all cases provide the detection or protection for which the system is designed or intended. Owners, lessees, and occupants of Lots on behalf of themselves, and their guests and invitees, acknowledge and understand that the Association and Related Parties are not an insurer and that each Owner, lessee and occupant of any Lot and on behalf of themselves and their guests and invitees assumes all risks for loss or damage to persons, to residential dwellings and to the contents of their residential dwelling and further acknowledges that the Association and Related Parties have made no representations or warranties nor has any Owner or lessee on behalf of themselves and their guests or invitees relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire protection, burglar alarm systems, access control systems, patrol services, surveillance equipment, monitoring devices or other security systems recommended or installed or any security measures undertaken within the Property.

## ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. These Restrictions shall run with the Property and shall be binding upon and inure to the benefit of and be enforceable by Declarant, the Association, each Owner and occupant of a Lot, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. If notice and an opportunity to be heard are given, the Association shall be entitled to impose reasonable fines for violations of the restrictions or any rules and regulations adopted by the Association or the Architectural Review Committee pursuant to any authority conferred by either of them by these restrictions and to collect reimbursement of actual attorney's fees and other reasonable costs incurred by it relating to violations of the restrictions. Such fines, fees and costs may be added to the Owner's assessment account and collected in the manner provided in Article V of this Declaration.

In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of the provisions of the restrictions, the Declarant, the Association, each Owner or occupant of a Lot, or any portion thereof, may institute and prosecute any proceeding at law or in equity to abate, preempt or enjoin any such violation or attempted violation or to recover monetary damages caused by such violation or attempted violation. Upon the violation of any of the provisions of these restrictions by any Owner, in addition to all other rights and remedies available to it at law, in equity or otherwise, the Association, acting through the Board, shall have the right to suspend the right of such Owner to vote in any regular or special meeting of the members during the period of the violation.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions shall not affect any other provision, which shall remain in full force and effect.

Section 3. Duration; Amendment. The provisions of this Declaration shall run with and bind the Property for a term of twenty-five (25) years from this date, after which time they shall be automatically extended for successive periods of ten (10) years.

This Declaration may be amended during the first twenty-five year period by an instrument signed by a sufficient number of Owners representing not less than two-thirds (2/3) of the votes in the Association, and thereafter by an instrument signed by a sufficient number of Owners representing not less than fifty (50%) percent of the votes. In addition, any amendment hereto (i) to change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, or (ii) to change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the maintenance of Common Open Areas, or (iii) to use hazard insurance proceeds for losses to the improvements in Common Open Areas, if any, for other than the repair, replacement or reconstruction of such improvements shall require the additional approval of two-thirds (2/3) majority of the First Mortgagees (based upon one vote for each mortgage owned).

- (a) Any amendment hereto affecting any of the following shall require the additional approval of fifty-one percent (51%) of the First Mortgagees (based upon one vote for each mortgage owned):
- (1) voting;
  - (2) reserves for maintenance of the Property;
  - (3) insurance or fidelity bonds;
  - (4) rights to use of the Common Open Areas;
  - (5) responsibility for maintenance of the Common Open Areas;
  - (6) addition to or withdrawal of a portion of Common Open Areas;
  - (7) sale of Common Open Areas to permit subdivision into Lots or Commercial Units;
  - (8) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey a Lot or Commercial Unit; and
  - (9) any provisions which are for the express benefit of First Mortgagees, or eligible insurers or guarantors of first mortgages on Lots or Commercial Units.

All amendments shall be recorded in the Official Public Records of Real Property of Ft. Bend County, Texas.

Deeds of conveyance of Lots or Commercial Units or any part thereof, may contain the above restrictive covenants by reference to this document, but whether or not such reference is made, each and all of such restrictive covenants shall be valid and binding upon the respective grantees.

(b) The Declarant reserves the right during the Development Period, without joinder or consent of any Owner or mortgagee, to amend this Declaration or the By-Laws by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veteran's Administration, or Federal Housing Administration, provided that no such amendment shall change the vested property rights of any Owner, except as otherwise provided herein.

Section 4. Books and Records. The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any Member for any proper purpose. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any Member will not become burdensome to nor constitute harassment of the Association. The Declaration, the Articles of Incorporation and By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

Section 5. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

Section 6. Good Faith Lender's Clause. Any violation of these covenants, conditions or restrictions shall not affect any lien or deed of trust of record held in good faith, upon any Lot or Commercial Unit, which liens may be enforced in due course, subject to the terms of this Declaration.

Section 7. Mergers. Upon a merger or consolidation of the Association with another association as provided by its Articles of Incorporation, its properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation. The surviving or consolidated association shall administer the covenants, conditions and restrictions contained in this Declaration, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 8. Annexation.

(a) Additional land or lands may be annexed to the Property with the consent of two-thirds (2/3) of each class of Members, and the approval of the owner(s) of the land to be annexed.

(b) Notwithstanding anything contained in Subparagraph (a) above, or any other provision herein, Declarant shall have the right, without the consent of any other Owners or any First Mortgagee, to bring within the scheme of the Declaration, in one (1) or more future stages, sections or additions, any additional land, within fifteen (15) years of the date of recording of this instrument. Further, any land annexed to the Property and subject to this Declaration may be acquired (by gift, purchase, or otherwise) and/or designated as Common Open Areas by the Association without the consent of any Owners or any First Mortgagee. Nothing in this Declaration shall be construed to represent that Declarant, or its successors or assigns, are under any obligation to add or annex additional lands to those subject to this Declaration.

(c) Any such additions shall be developed in a manner similar to the development of the Property in accordance with a general plan of development under which the architectural standards prevailing within the Property will be continued in such annexed lands, the dwellings or commercial structures to be constructed on Lots or Commercial Units within such annexed lands will be similar to the residential dwelling or commercial structures constructed on the Property, and the Lots or Commercial Units within the annexed lands will become subject to assessment in the same manner as then prevailing for the Property. All the provisions of this Declaration shall apply to the lands being annexed with the same force and effect as if said lands were originally included in the Property subject to this Declaration.

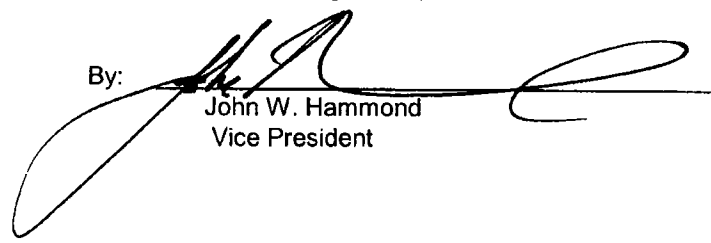
(d) The additions authorized under this Section shall be made by filing of record: (a) Supplementary Declaration(s) of Covenants, Conditions and Restrictions with respect to the additional lands which shall (i) extend the scheme of the covenants and restrictions of this Declaration to such lands and (ii) provide, if applicable, that the proportionate ownership interests in the Common Open Areas of the Owners by virtue of Association membership immediately prior to the filing of such Supplementary Declaration shall be equal to the number of Lots and Commercial Units owned by such Owner divided by the total number of Lots and Commercial Units within the lands then subject to this Declaration after such annexation; and (b) a deed from Declarant to the Association which shall convey to the Association all of the area within such additions (except for the Lots or Commercial Units therein) as Common Open Areas for the benefit and use of the Owners, with reservation of Declarant's rights set forth herein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 12 day of February, 2007.

**Declarant**

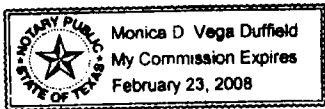
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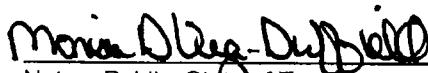
By: Lennar Texas Holding Company, a Texas corporation, its general partner

By:   
John W. Hammond  
Vice President

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument is acknowledged before me on February 12, 2007 by John W. Hammond, Vice President of Lennar Texas Holding Company, which is the general partner of LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD., a Texas limited partnership doing business as FRIENDSWOOD DEVELOPMENT COMPANY, on behalf of said limited partnership



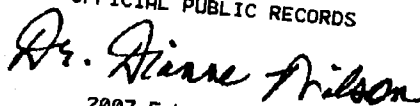
  
Notary Public, State of Texas

After Recording please return to:  
Friendswood Development Company  
550 Greens Parkway, Suite 100  
Houston, TX 77067-4526

Attn: Barbara Mayer

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



2007 Feb 19 01:43 PM

DA \$89.00

2007020558

Dianne Wilson, Ph.D. COUNTY CLERK  
FT BEND COUNTY TEXAS